

**BEFORE THE
PENNSYLVANIA PUBLIC UTILITY COMMISSION**

Application of Aqua Pennsylvania : Docket No. A-2021-3027268
Wastewater, Inc. (hereinafter referred to as :
“Aqua” or “Applicant”) pursuant to Sections :
1102 and 1329 of the Public Utility Code for: :

**(1) approval of the acquisition by Aqua of :
the wastewater system assets of Willistown :
Township (“Willistown” or “Township”) :
situated within the Township of Willistown, :
Chester County, Pennsylvania; :**

**(2) approval of the right of Aqua to begin :
to offer, render, furnish and supply :
wastewater service to the public in portions :
of Willistown Township, Chester County, :
Pennsylvania; and :**

**(3) an order approving the acquisition :
that includes the ratemaking rate base of the :
Willistown Township wastewater system :
assets pursuant to Section 1329(c)(2) of the :
Public Utility Code. :**

**Request for Approval of Contracts, :
including Assignments of Contracts, between :
Aqua and Willistown Township, Pursuant to :
Section 507 of the Public Utility Code :**

**Request for Approval of a Contract :
between Affiliated Interests, Pursuant to :
Section 2102 of the Public Utility Code :**

APPLICATION

To the Pennsylvania Public Utility Commission (“Commission”):

I. BACKGROUND

1. The name and address of Applicant are:

Aqua Pennsylvania Wastewater, Inc.
762 W. Lancaster Avenue
Bryn Mawr, PA 19010

2. The name, address and contact information for Applicant's counsel are:

Thomas T. Niesen, Esq.
Thomas, Niesen & Thomas, LLC
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Harrisburg, PA 17101
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3. Pursuant to Sections 1102 and 1329 of the Pennsylvania Public Utility Code (the "Code"), 66 Pa. C.S. §§ 1102 and 1329, Applicant hereby requests that the Commission: (1) approve Aqua's acquisition of the wastewater system assets ("**Assets**") of Willistown Township ("**Willistown**" or the "**Township**"); (2) approve the right of Aqua to begin providing wastewater service in the requested territory, as shown in the area outlined in red on the map attached hereto as **Exhibit A** (the "**Requested Territory**");¹ and (3) include, in its Order approving the acquisition, the ratemaking rate base of the Assets as determined under Section 1329(c)(2) of the Code.

4. The map of the Requested Territory includes a north arrow depicting map orientation, a graphic scale, the municipal boundaries of Willistown, and identification and depiction of all private and public roads relative to the Requested Territory. A bearing and angle description of the Requested Territory is included on Exhibit A. The Requested Territory is 4.34 square miles (2,777.5 acres).

¹ A CONFIDENTIAL facilities map is included with the Asset Inventory as addressed *infra*.

5. Aqua and Willistown have reached an agreement regarding the acquisition of the Assets, as evidenced by the *Asset Purchase Agreement*, dated as of January 20, 2021 and attached hereto as **Exhibit B** (the “**Agreement**”). Applicant respectfully requests that the Commission issue an *Order* and *Certificates of Public Convenience* approving and addressing the items requested in this Application.

6. An **Application Filing Checklist** identifying topics addressed and the section, paragraph, and page number where they can be found is included with this Application.

II. AFFECTED ENTITIES

7. Aqua is a regulated public utility company, duly organized and existing under the laws of the Commonwealth of Pennsylvania. Aqua is engaged in the wastewater service business and furnishes wastewater service to approximately 45,000 customer accounts, as reflected in documents already on file with the Commission. Aqua’s existing service territories cover various counties throughout Pennsylvania, including parts of Chester County and within the Township itself.

8. Willistown is a duly organized and validly existing township of the Second Class. The Township owns the sanitary wastewater collection and treatment system which provides sanitary wastewater service to approximately 2,294 customers in Willistown.

9. Applicant incorporates into this Application other information on file with the Commission, which establishes that Aqua is qualified to provide adequate public wastewater service. Aqua will supplement this Application with all additional information the Commission may require. Financial Statements of Aqua for 2020 are attached hereto as **Exhibit C**.

III. PLANT-IN-SERVICE

10. Aqua will acquire Willistown's wastewater collection system and treatment assets as defined in the Agreement. All assets are located in the Township, except in two areas where a main crosses into Tredyffrin Township then back into Willistown, and where a main crosses into Malvern Borough then back into Willistown.

11. A Sewage Facilities Assessment with Original Cost Estimate of the Willistown Sanitary Sewer System (the "**System**"), prepared by Pennoni Associates, Inc., Consulting Engineers ("**Asset Inventory**"), is attached hereto as **Exhibit D**. The facilities map included with the Asset Inventory is considered CONFIDENTIAL.

12. The Asset Inventory explains that the Willistown collection system has approximately 26 miles of gravity sewer collection mains, in sizes ranging from 8 inches to 18 inches in diameter, and the System has approximately 14 miles of force mains in sizes ranging from 1.5 to 14 inches in diameter. The Asset Inventory also details the Township owned wastewater treatment plant ("WWTP"), 6 Township-owned pump stations and 2 booster pump stations.

13. A list of non-depreciable property is presented in Section 9 of the Asset Inventory. The System has no plant held for future use and none is included in the Asset Inventory.

14. All component facilities are installed. The approximate time of installation of component facilities is addressed in Section 9 of the Asset Inventory and in Mr. Bubel's testimony.

15. Wastewater treatment is mainly provided by the Valley Forge Sewer Authority ("VFSA") at its WWTP located in Schuylkill Township, Chester County, pursuant to a Wastewater Service Agreement, dated November 1, 1970, Amended as of December 1, 1974, January 1, 1983, December 2, 1985, and October 4, 1994, by and between VFSA, the Townships of Schuylkill, East Pikeland, Charlestown, East Whiteland, Tredyffrin, Willistown, Easttown, the Borough of

Malvern, East Whiteland Municipal Authority², Easttown Municipal Authority, and Tredyffrin Township Municipal Authority. Willistown owns one WWTP, Penn's Preserve, which treats wastewater to a small community system. Chapter 94 Reports to the Department of Environmental Protection ("DEP") of Willistown for the Penn's Preserve WWTP and the Township are attached hereto as **Exhibit E1**. The Penn's Preserve WWTP has a permitted capacity of 0.045 million gallons per day ("MGD") with elevation ("EL") between EL 260 and 350. A copy of VFSA's 2020 Chapter 94 Report to DEP for the VFSA WWTP is attached hereto as **Exhibit E2**. The VFSA WWTP has a permitted capacity of 11.75 MGD with EL between EL 90 and EL 105.

16. Willistown accepts flow into its System from certain users on the border of Willistown and its neighboring municipalities, including the Borough of Malvern ("Malvern"), East Goshen Township ("East Goshen"), and East Whiteland Township ("EWT") which then flows for treatment at the VFSA. Willistown also sends flow from certain users on the border of Willistown to neighboring municipalities. Flows sent from Willistown to East Goshen are treated at the East Goshen Municipal Authority ("EGMA") Ridley Creek WWTP or the West Goshen Sewer Authority ("WGSA") WWTP. Flows sent from Willistown to Easttown Township are flowed to the VFSA. These arrangements are set forth in the **Exhibit F** contracts. A copy of EGMA's Chapter 94 Report is attached hereto as **Exhibit E3**. The EGMA WWTP has a permitted capacity of 0.75 MGD with EL between EL 365 and EL 380. A copy of WGSA's Chapter 94 Report is attached hereto as **Exhibit E4**. The WGSA WWTP has a permitted capacity of 6.0 MGD with EL between EL 300 and EL 380.

17. Elevation of the Willistown collection system and the service area varies:
EL 340 to EL 560 along the western boundary.

² The East Whiteland Municipal Authority was terminated by Ordinance enacted on July 8, 2015.

EL 220 to EL 240 along the southern boundary.

EL 310 to EL 410 along the northern boundary.

EL 310 to EL 600 along the eastern boundary.

18. Water service in the Requested Territory is provided by Aqua PA and private wells.

19. The original cost, by year and major plant category, of Willistown's used and useful plant in service is \$19,641,520 with a related calculation depreciation reserve of \$6,274,246.

20. Tentative journal entries to record the transaction are presented in Section IV.

IV. THE ASSET PURCHASE AGREEMENT

21. The Agreement is dated January 20, 2021. The purchase price is Seventeen Million Five Hundred Thousand Dollars (\$17,500,000.00).

22. The purchase price is based on arm's length negotiations. Aqua and the Township are not affiliated with each other.

23. Aqua will use short term debt initially for the purchase of the Assets with the expectation that the short term debt will be converted to long term debt and equity capital at a later date.

24. The wastewater system assets to be transferred are the "Acquired Assets" and have the meaning specified in Section 2.01 of the Agreement. The Acquired Assets include the assets, properties and rights of the Township used in the system and all treatment facilities, pipes, pumping stations, generators, manholes and pipelines and billing and collections related assets necessary to run the system.

25. The Acquired Assets also include the nineteen contracts identified on Schedule 4.13 of the Agreement to which the Township is a party (the "Assigned Contracts"). The Assigned Contracts are attached hereto as **Exhibit F1**, **Exhibit F2**, **Exhibit F3**, **Exhibit F4**, **Exhibit F5**,

Exhibit F6, Exhibit F7, Exhibit F8, Exhibit F9, Exhibit F10, Exhibit F11, Exhibit F12, Exhibit F13, Exhibit F14, Exhibit F15, Exhibit F16, Exhibit F17, Exhibit F18, and Exhibit F19, respectively.³

F1 – Valley Forge Treatment Plant Agreement, dated November 1, 1970, by and between Valley Forge Sewer Authority; the Townships of Schuylkill, East Pikeland, Charlestown, East Whiteland, Tredyffrin, Willistown, and Easttown; the Borough of Malvern; Malvern Municipal Authority; East Whiteland Municipal Authority; Tredyffrin Township Municipal Authority; and Easttown Township Municipal Authority.

F2 – Composite Amendment No. 1 to Valley Creek Trunk Sewer Agreement, East Whiteland Trunk Line Agreement, and Valley Forge Sewage Treatment Plant Agreement dated December 1, 1974, by and between Tredyffrin Township Municipal Authority, Township of Tredyffrin, Township of Schuylkill, Township of East Pikeland, Township of Charlestown, Township of East Whiteland, Township of Willistown, Township of Easttown, Borough of Malvern, Valley Forge Sewer Authority, Malvern Municipal Authority, East Whiteland Municipal Authority, and Easttown Municipal Authority.

F3 – Amendment to Valley Forge Sewer Treatment Plant Agreement, dated January 1, 1983, by and between Valley Forge Sewer Authority; the Townships of Schuylkill, East Pikeland, Charlestown, East Whiteland, Tredyffrin, Willistown, and Easttown; the Borough of Malvern; Malvern Municipal Authority; East Whiteland Municipal Authority; Easttown Municipal Authority; Tredyffrin Township Municipal Authority; and Willistown Township Municipal Authority.

F4 – Supplement to Valley Forge Sewage Treatment Plant Agreement For the Purpose of Complying with United States Environmental Protection Agency Regulations, dated December 2, 1985, by and between Valley Forge Sewer Authority; the Townships of Schuylkill, East Pikeland, Charlestown, East Whiteland, Tredyffrin, Willistown, and Easttown; the Borough of Malvern; Malvern Municipal Authority; East Whiteland Municipal Authority; Tredyffrin Township Municipal Authority; Easttown Township Municipal Authority, and Willistown Township Municipal Authority.

F5 – Addendum to Valley Forge Sewage Treatment Plant Agreement for the Purpose of Permitting and Administering the Sale of Reserved Capacity Among the Parties, dated May 26, 1994, by and between Valley Forge Sewer Authority, the Townships of Schuylkill, East Pikeland, Charlestown, East Whiteland, Tredyffrin, Willistown, and Easttown; the

³ As noted below, Exhibits F2, F12, and F13 are missing certain pages and/or exhibits. The Company and Willistown have sought to obtain the missing items from the parties to the contracts through Right to Know (“RTK”) requests, although some parties to the contracts are not subject to Pennsylvania’s RTK Law. Should the documents/information requested via RTK, or other means, be located and become available, Aqua will supplement the Application and record accordingly.

Borough of Malvern; East Whiteland Township Municipal Authority; Easttown Municipal Authority; and Tredyffrin Township Municipal Authority.

F6 – Inter-Municipal Sewer Line Extension Agreement, dated May 17, 1988, by and between the Borough of Malvern and the Township of Willistown.

F7 – Intermunicipal Sewer Line Connection and Use Agreement, dated August 20, 1996, by and between the borough of Malvern and the Township of Willistown.

F8 – Inter-Municipal Sewer Agreement Village at Pennwyck, dated 2000, by and between the Borough of Malvern and the Township of Willistown.

F9 – Sewage Treatment Agreement, dated October 11, 1988, by and between East Goshen Township, East Goshen Municipal Authority, and the Township of Willistown.

F10 – Sewage Treatment Agreement, dated December 23, 1996, by and between East Goshen Township, East Goshen Municipal Authority, and the Township of Willistown – (Phillips).

F11 – Sewage Treatment Agreement, dated December 23, 1996, by and between East Goshen Township, East Goshen Municipal Authority, and the Township of Willistown – (Willow Pond).

F12 – Sewage Treatment Agreement, dated 2003, by and between East Goshen Township, East Goshen Municipal Authority, and the Township of Willistown.⁴

F13 – Sanitary Sewage Cross-Easement Agreement, dated March 18, 1993, by and between Okehocking Associates and Quaker Real Estate, Inc.⁵

F14 – Deed of Dedication and Grant of Easements Sewage Treatment System for Phase 1, dated December 11, 1999, by and between Okehocking Associates, Quaker Sewer, Inc., and the Township of Willistown.

F15 – Woodview Development Agreement, dated September 14, 1993, by and between the Township of Willistown, East Whiteland Township, and East Whiteland Township Municipal Authority.

F16 – Wastewater Service Agreement, dated December 1999, by and between the Township of Easttown, Easttown Municipal Authority, and the Township of Willistown.

⁴ Signature pages for East Goshen Township, East Goshen Municipal Authority, and Willistown Township are missing. However, included in the Exhibit are Meeting Minutes from East Goshen Township and a letter approving the connection.

⁵ Exhibit C to the agreement is missing.

F17 – Purchase of Sewage Capacity Agreement, dated August 3, 2009, by and between the Devereux Foundation and the Township of Willistown.

F18 – Sewer Construction and Maintenance Agreement, dated August 3, 2009, by and between The Devereux Foundation and the Township of Willistown.

F19 – Wastewater Conveyance Agreement, dated November 20, 2018, by and between Aqua Resources, Inc., Tredyffrin Township, East Whiteland Township, Willistown Township, Charlestown Township, Schuylkill Township, East Pikeland Township, Easttown Township, Easttown Township Municipal Authority, The Borough of Malvern, Tredyffrin Township Municipal Authority, and Valley Forge Sewer Authority.

26. The Acquired Assets also include all Authorizations and Permits of or held by Willistown (to the extent transferrable to Aqua under applicable law), including all Authorizations and Permits which are environmental permits, other operating permits and those items listed or described on Schedule 4.12 of the Agreement.

27. “Excluded Assets,” which are those assets not being transferred to Aqua, has the meaning specified in Section 2.02 of the Agreement. Excluded Assets include Stormwater System Assets, contracts that are not Assigned Contracts, cash and cash equivalents and the assets, properties and rights set forth in Schedule 2.02(h) of the Agreement.

28. “Assumed Liabilities” has the meaning specified in Section 2.04(a) of the Agreement and includes all liabilities and obligations arising out of or relating to Aqua’s ownership or operation of the wastewater system and the Acquired Assets on or after Closing.

29. The tentative journal entries to record the transfer in Aqua’s accounts are:

	Debit	Credit
Utility Plant Purchased	\$17,500,000	
Cash/Short Term Debt		\$17,500,000

V. CUSTOMERS

30. Willistown provides wastewater service to 2,294 customers which are broken down by customer group. Gravity Sewer Customers – 1,694; Low Pressure Sewer Customers – 385; Penn's Preserve Sewer Customers – 195; East Goshen Sewer Customers – 20.

31. Wastewater flow for Willistown customers was approximately 158,701,000 gallons for 2020. A breakdown of gallons treated by customer group is presented in Mr. Bubel's testimony.

32. The Township projects growth of 40 Equivalent Dwelling Units over the next five years.

VI. RATES

33. After Closing, Aqua will implement Willistown's sanitary wastewater rates in effect at closing as reflected on Schedule 7.03(a) of the Agreement. Aqua and Willistown have agreed that rates shall not be increased until after the second anniversary of the Closing Date.⁶ The Township presently bills on a quarterly basis. Aqua will convert Willistown customers to monthly billing at Closing. A schedule of rates tariff page implementing monthly rates for Township customers post-Closing is attached hereto as **Exhibit G**.

34. As presented in Schedule 7.03(a) of the Agreement, Willistown bills Gravity Sewer Customers that send flows to the VFSA a quarterly base fee of \$124.66 and a quarterly consumption charge of \$5.52 per 1,000 gallons based on water usage. Low Pressure Sewer Customers that send flows to the VFSA are billed a quarterly base fee of \$124.66 and a quarterly consumption charge of \$5.52 per 1,000 gallons based on water usage. Customers in the Penn's

⁶ As explained in the testimony of Aqua Witness Packer, the two-year rate freeze is not a rate stabilization plan.

Preserve System are charged a flat quarterly fee of \$187.96. Willistown residents that send flows into the East Goshen Township sewer system are charged a flat quarterly fee of \$153.87. A copy of Willistown's currently effective Rate Ordinance is attached hereto as **Exhibit H**.

35. Upon Commission approval of this Application and completion of the proposed transaction, Aqua will begin to provide wastewater service in its name to the customers in the Requested Territory. It will implement its *Rules and Regulations* to govern the provision of wastewater service in the Requested Territory, as those *Rules and Regulations* are in effect from time to time for Aqua.

36. Copies of the notices that will be sent to customers of Aqua and to customers of Willistown describing the filing and the anticipated impact on rates are attached hereto as **Exhibit I1** and **Exhibit I2**.

VII. COST OF SERVICE

37. Copies of Willistown's Annual Financial Report for 2018 and 2019 are attached hereto as **Exhibit J1** and **Exhibit J2**. For the year-ended December 31, 2019, the Township had approximately \$13,621,146 of long-term debt, and details of the long-term debt obligations are described in Exhibit J2, page 37 and 38.

38. Copies of Willistown's Adopted Annual Budgets for 2020 and 2021 are attached hereto as **Exhibit J3** and **Exhibit J4**.

39. A copy of Willistown's most recent annual report filed with the Department of Community and Economic Development is attached hereto as **Exhibit K**.

40. Aqua projects annual revenue of \$2,083,460 from the Willistown customers based on Willistown's current rate schedule, calculated as follows:

	<i>Current Rates (Qtr. Fixed Fee)</i>	<i>Current Rates (per Kgal)</i>	<i>Customers 2020</i>	<i>Method</i>	<i>Gallons 2020</i>	<i>Connections 2020</i>	<i>Revenue 2020</i>
Service Charges:							
VALLEY FORGE	\$124.66	\$5.52	1,694	quarterly per connection / vol per Kgal	123,965,800	1,881	\$1,622,233
LOW PRESSURE							
CUSTOMERS	\$124.66	\$5.52	385	quarterly per connection / vol. per Kgal	22,065,300	362	\$302,308
PENNS							
PRESERVE	\$187.96		195	quarterly per connection		195	\$146,609
EAST GOSHEN	\$153.87		20	quarterly per connection		20	\$12,310
Total Revenue at Present Rates			2,294		146,031,100	2,458	\$2,083,460

41. Aqua estimates annual operating and maintenance expenses of \$1,750,444 based on Willistown's operating expenses presented in the 2019 financial statements, as adjusted by Aqua.

VIII. PROOF OF COMPLIANCE

42. Aqua will operate and manage the Willistown wastewater system as a standalone collection and treatment system within Aqua's footprint from its Southeastern Division Office in Bryn Mawr, Pennsylvania. The system is approximately 9 miles from the Company's Southeastern Division Office. Mr. John M. Bright will be the assigned Certified Wastewater Operator for the system. Mr. Bright's currently effective Wastewater Operator's License is attached hereto as **Exhibit L**.

43. The Water Quality Management ("WQM") Permit for the Penn's Preserve WWTP issued in 2020 is attached as **Exhibit M1**. A WQM permit for the VFSA WWTP is attached as **Exhibit M2**. A WQM permit for the EGMA WWTP is attached as **Exhibit M3**. A WQM permit for the WGSA WWTP is attached as **Exhibit M4**. Pump station ("PS") WQM permits for

Willistown are included as **Exhibit M5** (PS No. 3), **Exhibit M6** (PS No. 4), **Exhibit M7** (PS No. 5 Penn's Preserve), **Exhibit M8** (Dovecote PS) and **Exhibit M9** (East Central Sewer)⁷. WQM permits for PS No. 1 and PS No. 2 could not be located and Township will be filing with DEP for reissuance of these permits. The VFSA, EGMA, and WGSA WWTPs are not part of the acquisition transaction. The National Pollution Discharge Elimination System Permits for the VFSA, EGMA, and WGSA WWTPs are attached hereto as **Exhibit N1**, **Exhibit N2**, and **Exhibit N3**, respectively. Copies of Discharge Monitoring Reports ("DMR") for the Penn's Preserve, VFSA, EGMA, and WGSA WWTPs, from January 2016 through December 2020, are attached hereto as **Exhibit N4**, **Exhibit N5**, **Exhibit N6**, and **Exhibit N7**, respectively.

44. Willistown did not have any Notices of Violation within the last five years. **Exhibit Q** of the Application is Reserved.

45. Aqua is a Class A utility. It is in good standing with the DEP and in general compliance with the DEP with regard to the provision of wastewater service.

46. The service area comprising the Requested Territory is consistent with Willistown's service area mapped by the Township and in compliance with the DEP-approved Act 537 Plans. A copy of Willistown's Act 537 Plan documents is attached hereto as **Exhibit P1** (2001 Plan). A copy of the VFSA Act 537 Plan is attached hereto as **Exhibit P2**. A copy of the East Goshen Act 537 Plan is attached hereto as **Exhibit P3**. A copy of the West Goshen Act 537 Plan is attached hereto as **Exhibit P4**. Aqua is not proposing to expand service beyond the sewered areas.

⁷ The East Central Sewer WQM permit applies to Booster Station Nos. 1 and 2.

47. The web address for the Willistown Comprehensive Plan is: <https://www.willistown.pa.us/DocumentCenter/View/16>. The web address for the Chester County Comprehensive Plan is: <https://chescoplanning.org/Landscapes3/PDF/Landscapes3.pdf>.

48. Aqua has an existing operational presence and wastewater professionals in close proximity to the Requested Territory. Aqua provides wastewater service in Chester County and Aqua already has an operational presence in the Township through its Willistown Woods, Deerfield Knoll, and Plumsock wastewater systems, all of which are less than 0.5 miles from the Penn's Preserve system and approximately 3 miles from the main Willistown system. The acquisition will easily fold into Aqua's existing wastewater operations. A listing of Aqua's nearby territory and facilities is as follows:

Aqua Facilities	Location	Distance from Township
Willistown Woods System	West Chester, PA	3
Deerfield Knoll System	West Chester, PA	3
Plumsock System	West Chester, PA	3
Southeastern Division Office	Bryn Mawr, PA	9

49. Aqua is not anticipating any physical, operational or managerial changes at its Southeastern Office as a result of the acquisition. Aqua plans to add 2 additional operators to address the day-to-day operations of Willistown, which would be added in Q1 2022.

50. Planned capital improvements are addressed in Mr. Bubel's testimony.

IX. AFFECTED PERSONS

51. No corporation or entity, except Willistown, is now furnishing or has corporate or franchise rights to furnish wastewater service in the Requested Territory, and no competitive condition will be created by approval of this Application. Water and wastewater service providers abutting or within one mile of the Requested Territory are as follows:

- i. Within neighboring East Whiteland Township, water service is provided by Aqua PA and private wells. Wastewater service is provided by East Whiteland Township and private septic systems.
- ii. Within neighboring Tredyffrin Township, water service is provided by Aqua PA and private wells. Wastewater service is provided by Tredyffrin Township and private septic systems.
- iii. Within neighboring Malvern Borough, water service is provided by Aqua PA and private wells. Wastewater service is provided by Malvern Borough and private septic systems.
- iv. Within neighboring East Goshen Township, water service is provided by Aqua PA and private wells. Wastewater service is provided by EGMA and private septic systems.
- v. Within neighboring Easttown Township, water service is provided by Aqua PA and private wells. Wastewater service is provided by Easttown Municipal Authority and private septic systems.
- vi. Within neighboring Edgmont Township, water service is provided by Aqua PA and private wells. Wastewater service is provided by the Edgmont Township, Delaware County Regional Water Quality Control Authority and private septic systems.

X. REASONS SUPPORTING THIS APPLICATION

52. Approval of this Application is necessary or proper for the service, accommodation, convenience or safety of the public. As summarized below and discussed further in the testimonies of Mr. Packer and Mr. Bubel, which as identified in Section XI below, are attached hereto as **Exhibit U** and **Exhibit V**:

- a. Aqua has the technical, regulatory, financial and legal fitness to operate the Assets of Willistown, and to maintain the operations and make improvements to meet continuing and future customer needs.⁸ The proposed transaction will not have an adverse effect on the service provided to existing customers of Aqua;

⁸ As a certificated provider of utility service, Aqua's fitness is presumed. *See Re Pennsylvania-American Water Company*, 85 PA PUC 548 (1995).

b. Willistown has agreed to sell its Assets. The public interest and need will be served by allowing Aqua, in lieu of Willistown, to provide wastewater service in the Requested Territory and to address the issues of regulatory requirements and capital expenditures. The Willistown system will benefit from the support of wastewater professionals throughout Aqua's organization;

c. The acquisition is consistent with the Commission's long-standing policy supporting the consolidation/regionalization of water/wastewater systems. Through consolidation/regionalization, the utility industry has a better chance to realize the benefits of better management practices, economies of scale, and the resulting greater environmental/economic benefits. The Commission has previously stated that "acquisitions of smaller systems by larger more viable systems will likely improve the overall long-term viability of the water and wastewater industry."⁹ The benefits of consolidation/regionalization, ultimately, inure to customers both existing and acquired;

d. Aqua provides utility service to approximately 45,000 wastewater customers and has years of experience operating wastewater treatment and collection systems in a safe, reliable and efficient manner. Aqua has the managerial, technical, and financial resources to improve the operations of the Township;

e. In *McCloskey v. Pa. P.U.C.*, 195 A.3d 1055 (Pa. Commw. Ct. 2018), *petition for allowance of appeal denied* No. 703 MAL 2018 (April 23, 2019), the Commonwealth Court held that Commission findings: (i) that Aqua, as the owner of numerous water and wastewater systems has sufficient operational expertise and ability to

⁹ Pennsylvania Public Utility Commissioner, Final Policy Statement on Acquisitions of Water and Wastewater Systems, Docket No. M-00051926, Final Order at 18 (Aug. 17, 2006).

raise capital to support system operations; and (ii) that the Commission has a policy of consolidation/regionalization of wastewater system assets that allows for increased maintenance, upgrade and expansion of public sewer and water facilities, are substantial evidence, consistent with *Popowsky v. Pa. P.U.C.*, 937 A.2d 1040 (Pa. 2007), to support a conclusion that there is a public benefit to a transaction such as the one that is the subject of this proceeding;

f. The acquisition of the Willistown Sewer system will increase Aqua's customer base by approximately 5%. With a larger customer base, future infrastructure investments, Statewide, will be shared at a lower incremental cost per customer for all Aqua customers; and

g. The acquisition will not have any immediate impact on the rates of either existing customers of Aqua or Township customers. As discussed in the testimony of Mr. Packer and presented in the Notice to customers, the increase in rate base may ultimately require an increase in revenue. The hypothetical impact on rates is outweighed by the recognized benefits of Aqua's ownership including its expertise and ability to raise capital; the furtherance of consolidation/regionalization of wastewater services; and the spreading of costs over a larger customer base. Perhaps more significantly, the acquisition furthers the objective of the General Assembly with the enactment of Section 1329. While *McCloskey* concludes that rate impact should be addressed, it recognizes that it is not dispositive in the Commission's determination of substantial affirmative benefits.

XI. ADDITIONAL INFORMATION REQUIRED BY SECTION 1329 OF THE CODE AND THE COMMISSION'S 1329 CHECKLIST

53. Aqua and Willistown have agreed to use the process presented in Section 1329 of the Code, 66 Pa. C.S. § 1329, to determine the fair market value of the Assets and the ratemaking

rate base. Aqua's verified statement that it selected Gannett Fleming Valuation and Rate Consultants, LLC ("Gannett Fleming") as its Utility Valuation Expert ("UVE") is attached hereto as **Exhibit AA1**. Willistown's verified statement that it selected AUS Consultants ("AUS") as its UVE is attached hereto as **Exhibit AA2**.

54. As required by Section 1329(d)(1)(i), copies of the Fair Market Value ("FMV") Appraisal Reports of UVEs Gannett Fleming and AUS are attached hereto as **Exhibit Q** and **Exhibit R**, respectively. Confidential and Proprietary Work Paper Files, in Excel Format, of Gannett Fleming and AUS are provided with the Application.

55. Applicant states that the purchase price of the Assets of the selling utility as agreed to by Aqua and Willistown is \$17,500,000.

56. The ratemaking rate base determined pursuant to Section 1329(c)(2) of the Code is \$17,500,000, being the lesser of the purchase price of \$17,500,000 negotiated by Aqua and Willistown and the average of the FMV appraisals which is \$22,363,070 – determined by \$25,613,000 presented in the appraisal of Gannett Fleming and \$19,113,140 presented in the appraisal of AUS.

57. Aqua will incur transaction and closing costs of approximately \$300,000, which it will include in its rate base.

58. A schedule of rates tariff page implementing rates equal to the rates of Willistown at the time of closing is attached hereto as **Exhibit G**, as previously stated.

59. Applicant verifies that Gannett Fleming was selected by Aqua, the acquiring public utility, and that AUS was selected by Willistown, the selling municipality.

60. The UVEs were paid \$56,832.45 for the completed FMV Appraisal Reports. Documentation of the fees paid to Gannett Fleming and AUS, including the valuation service

agreements and all associated invoices, are attached hereto as **Exhibit S1** and **Exhibit S2**, respectively. Fees paid to the UVEs did not exceed 5% of the fair market value of the selling utility.

61. Statements of Gannett Fleming and of AUS verifying that they have no affiliation with Aqua or Willistown as specified in Section 1329; that their Appraisals determined FMV in compliance with the most recent edition of the Uniform Standards of Professional Appraisal Practice as of the date of their report, employing the cost, market and income approaches; and that they applied applicable jurisdictional exceptions to their submitted Appraisal are attached hereto as **Exhibit T1** and **Exhibit T2**, respectively.

62. The testimony of William C. Packer, in support of this Application is attached hereto as **Exhibit U**. Mr. Packer's testimony explains that Aqua is not presenting a rate stabilization plan. Aqua is proposing to implement Willistown's existing rates after Closing and to maintain those rates until the next Aqua rate proceeding following Closing of the transaction.

63. The testimony of Mark J. Bubel, Sr., in support of this Application is attached hereto as **Exhibit V**.

64. The testimony of Sally Slook, Township Manager, Willistown, in support of the Application is attached hereto as **Exhibit W**.

65. The Engineer's Asset Inventory of tangible assets of Willistown is attached hereto as **Exhibit D** as aforesaid.

66. The testimony of Harold Walker, III, in support of the Gannett Appraisal is attached hereto as **Exhibit X**.

67. The testimony of Jerome C. Weinert in support of the AUS Appraisal is attached hereto as **Exhibit Y**.

68. Answers to the Section 1329 Application Standard Data Requests are attached hereto as **Exhibit Z**.

XII. SECTION 507 APPROVAL OF ASSIGNMENT OF CONTRACTS

69. Section 507 of the Code provides that, except for contracts between a public utility and a municipal corporation to furnish service at tariff rates, no contract or agreement between a public utility and a municipal corporation shall be valid unless filed with the Commission at least 30 days prior to its effective date.

70. Aqua requests that the Commission, to the extent necessary, issue certificates for filing, pursuant to Section 507, for the following.

- i. F1 – Valley Forge Treatment Plant Agreement, dated November 1, 1970, by and between Valley Forge Sewer Authority; the Townships of Schuylkill, East Pikeland, Charlestown, East Whiteland, Tredyffrin, Willistown, and Easttown; the Borough of Malvern; Malvern Municipal Authority; East Whiteland Municipal Authority; Tredyffrin Township Municipal Authority; and Easttown Township Municipal Authority.
- ii. F2 – Composite Amendment No. 1 to Valley Creek Trunk Sewer Agreement, East Whiteland Trunk Line Agreement, and Valley Forge Sewage Treatment Plant Agreement dated December 1, 1974, by and between Tredyffrin Township Municipal Authority, Township of Tredyffrin, Township of Schuylkill, Township of East Pikeland, Township of Charlestown, Township of East Whiteland, Township of Willistown, Township of Easttown, Borough of Malvern, Valley Forge Sewer Authority, Malvern Municipal Authority, East Whiteland Municipal Authority, and Easttown Municipal Authority
- iii. F3 – Amendment to Valley Forge Sewer Treatment Plant Agreement, dated January 1, 1983, by and between Valley Forge Sewer Authority; the Townships of Schuylkill, East Pikeland, Charlestown, East Whiteland, Tredyffrin, Willistown, and Easttown; the Borough of Malvern; Malvern Municipal Authority; East Whiteland Municipal Authority; Easttown Municipal Authority; Tredyffrin Township Municipal Authority; and Willistown Township Municipal Authority
- iv. F4 – Supplement to Valley Forge Sewage Treatment Plant Agreement For the Purpose of Complying with United States Environmental Protection Agency Regulations, dated December 2, 1985, by and between Valley Forge Sewer Authority; the Townships of Schuylkill, East Pikeland, Charlestown, East Whiteland, Tredyffrin, Willistown, and Easttown; the Borough of Malvern;

Malvern Municipal Authority; East Whiteland Municipal Authority; Tredyffrin Township Municipal Authority; Easttown Township Municipal Authority, and Willistown Township Municipal Authority.

- v. F5 – Addendum to Valley Forge Sewage Treatment Plant Agreement for the Purpose of Permitting and Administering the Sale of Reserved Capacity Among the Parties, dated October 4, 1994, by and between Valley Forge Sewer Authority, the Townships of Schuylkill, East Pikeland, Charlestown, East Whiteland, Tredyffrin, Willistown, and Easttown; the Borough of Malvern; East Whiteland Township Municipal Authority; Easttown Municipal Authority; and Tredyffrin Township Municipal Authority
- vi. F6 – Inter-Municipal Sewer Line Extension Agreement, dated May 17, 1988, by and between the Borough of Malvern and the Township of Willistown
- vii. F7 – Intermunicipal Sewer Line Connection and Use Agreement, dated August 20, 1996, by and between the Borough of Malvern and the Township of Willistown
- viii. F8 – Inter-Municipal Sewer Agreement Village at Pennwyck, dated 2000, by and between the Borough of Malvern and the Township of Willistown
- ix. F9 – Sewage Treatment Agreement, dated October 11, 1988, by and between East Goshen Township, East Goshen Municipal Authority, and the Township of Willistown
- x. F10 – Sewage Treatment Agreement, dated December 23, 1996, by and between East Goshen Township, East Goshen Municipal Authority, and the Township of Willistown – (Phillips)
- xi. F11 – Sewage Treatment Agreement, dated December 23, 1996, by and between East Goshen Township, East Goshen Municipal Authority, and the Township of Willistown – (Willow Pond)
- xii. F12 – Sewage Treatment Agreement, dated 2003, by and between East Goshen Township, East Goshen Municipal Authority, and the Township of Willistown
- xiii. F13 – Sanitary Sewage Cross-Easement Agreement, dated March 18, 1993, by and between Okehocking Associates and Quaker Real Estate, Inc.
- xiv. F14 – Deed of Dedication and Grant of Easements Sewage Treatment System for Phase 1, dated December 11, 1999, by and between Okehocking Associates, Quaker Sewer, Inc., and the Township of Willistown
- xv. F15 – Woodview Development Agreement, dated September 14, 1993, by and between the Township of Willistown, East Whiteland Township, and East Whiteland Township Municipal Authority

- xvi. F16 – Wastewater Service Agreement, dated December 1999, by and between the Township of Easttown, Easttown Municipal Authority, and the Township of Willistown
- xvii. F17 – Purchase of Sewage Capacity Agreement, dated August 3, 2009, by and between the Devereux Foundation and the Township of Willistown
- xviii. F18 – Sewer Construction and Maintenance Agreement, dated August 3, 2009, by and between The Devereux Foundation and the Township of Willistown
- xix. F19 – Wastewater Conveyance Agreement, dated November 20, 2018, by and between Aqua Resources, Inc., Tredyffrin Township, East Whiteland Township, Willistown Township, Charlestown Township, Schuylkill Township, East Pikeland Township, Easttown Township, Easttown Township Municipal Authority, The Borough of Malvern, Tredyffrin Township Municipal Authority, and Valley Forge Sewer Authority

XIII. SECTION 2102 APPROVAL OF CONTRACTS BETWEEN AFFILIATED INTERESTS

71. Section 2102 of the Code provides that no contract or arrangement providing for the furnishing of management, supervisory, construction, engineering, accounting, legal, financial, or similar services, and no contract or arrangement for the purchase, sale, lease, or exchange of any property, right, or thing or for the furnishing of any service, property, right or thing other than those above enumerated, made or entered into after the effective date of this section between a public utility and any affiliated interest shall be valid or effective unless and until such contract or arrangement has received the written approval of the commission.

72. Upon Closing of the Proposed Transaction Aqua will take assignment from Willistown of the Wastewater Conveyance Agreement among Aqua Resources, Inc. and the Townships of Tredyffrin, East Whiteland, Willistown, Charlestown, Schuylkill, East Pikeland and Easttown; Easttown Township Municipal Authority; the Borough of Malvern; Tredyffrin Township Municipal Authority; and VFSA, dated November 20, 2018, included and noted above

as **Exhibit F19**. Aqua requests that the Commission, to the extent necessary, approve, pursuant to Section 2102, **Exhibit F19**, which will become an affiliated contract at Closing.

XIV. OTHER APPROVALS, CERTIFICATES, REGISTRATIONS AND RELIEF, IF ANY

73. Aqua asks that the Commission issue such other approvals, certificates, registrations and relief, if any, that may be required with respect to Aqua's acquisition of the Willistown wastewater system assets.

XV. CONCLUSION

WHEREFORE, Aqua requests that the Public Utility Commission approve this Application, filed pursuant to Sections 1102, 1329, 507, and 2102 of the Code, and:

a. Issue *Certificates of Public Convenience* under Section 1102 of the Code:

(1) Authorizing Aqua to acquire, by purchase, the wastewater system assets of Willistown; and

(2) Authorizing Aqua to begin to offer, render, furnish and supply wastewater service to the public in the Requested Territory covered by this Application;

b. Authorize Aqua to file tariff revisions, effective upon one day's notice, to:

(1) Include within its territory all the Requested Territory covered by this Application;

(2) Adopt and apply the Township's rates as set forth in this Application as Aqua's Base Rates within the Requested Territory; and

(3) Apply Aqua's *Rules and Regulations* within the Requested Territory;

- c. Enter an *Order* approving this Application and Aqua's acquisition of the Assets and, as part of that *Order* include the ratemaking rate base of Willistown as \$17,500,000 pursuant to Section 1329(c)(2) of the Public Utility Code;
- d. Approve Contracts, including Assignment of Contracts, between Aqua and Willistown, pursuant to Section 507 of the Public Utility Code;
- e. Approve the contract between Aqua and Aqua Resources, Inc., pursuant to Section 2102 of the Code; and
- f. Issue such other approvals, certificates, registrations and relief, if any, under the Code that may be required with respect to Aqua's acquisition of the Willistown Township wastewater system assets.

Respectfully submitted,

AQUA PENNSYLVANIA WASTEWATER, INC.

By 

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Date: August 3, 2021